

(8) Arguments:**Group A:**

Claim amendments to claims 1 and 40 are submitted with this Brief for the purpose of addressing the Section 112 rejection of the Group A claims. Other minor amendments are proposed to claim 1 for the purpose of remedying typographical errors and minor clarity issues.

In general the Applicant disagrees that the claim as a whole, before or after amendment are fatally defective under 112, second paragraph. The claims as a whole are considered adequate for the purpose of pointing out and distinctly claiming the subject matter of the invention. The examiner has not met the burden of establishing that the hypothetical addressee would fail to grasp the invention, given the claim language.

Group B:

The examiner also complains that claims 37 and 38 are somehow inconsistent with one another. In fact claim 38 limits claim 37 as a drainage line exit of a sidewall can represent, in practice, a low point of the receptacle. This is shown in Figures 1 and 2 of the specification. The same arguments hold for claims 42 and 43.

Groups C and D:

Claims 41 and 44 contain meaningful limitations. In reality the examiner's objection is not understood and was raised late in the prosecution. The recitations in these claims are not mentioned in earlier claims and are not duplicative.

Group E:

Claims 35-45 stand rejected under 35 USC 103. The Applicant contends that the examiner has not met his burden on the issue of obviousness and that neither the facts nor the law supports the examiners conclusions. The law is clear and well established in this area and the examiner's conclusions can not be sustained.

Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. The United States Supreme Court, in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

*Under § 103, the scope and content of the prior art are to be determined;
differences between the prior art and the claims at issue are to be ascertained;
and the level of ordinary skill in the pertinent art resolved.*

As is evident from the MPEP, USPTO policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. The factual inquires enunciated therein require, without exception:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue; and
- (C) Resolving the level of ordinary skill in the pertinent art.

Accordingly, examiners should apply the test for patentability under 35 U.S.C. 103 set forth in *Graham*. Further, in applying *Graham*

- the claimed invention must be considered as a whole
- the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination
- the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.

Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Considering claim 35 as a whole, it would appear that the examiner has made significant errors in the application of the *Graham* tests.

He has failed to consider the claims as a whole, he has failed to take into account the content of the prior art and he has failed to ascertain the differences between the art and the claims. In addition, no determination, evidence or even naked assertion is made about the level of ordinary skill in the art at the time the invention was made.

There are important features of the claimed invention that have been disregarded by the examiner. These are, in the affirmative recitation in claim 33 and all of its dependencies:

"a waste collecting receptacle including an open mouth for receiving waste products from a floor surface or appliance and a well which terminates in an outlet in fluid communication with said mouth..."

The PCT reference does not disclose, teach, motivate or suggest that the device includes a **receptacle or well with an outlet**. A receptacle is commonly understood to be: that which is used for receiving and containing something, or a reservoir. This notion is reinforced by the explicit recitation that the device comprises a well with an outlet. The main body of the device of the PCT citation teaches only a "lower member" which is a plain cylindrical form with no **receptacle or well or outlet** as taught by the applicant. Therefore the examiner is incorrect, for failing to give weight to the claimed features: receptacle, well and outlet features and in surmising that the prior art teaches these features. The benefit of these features is, as shown in Figure 2 of the Application, to allow for the collection of waste origination from anywhere over the entire mouth of the receptacle, into the outlet, by collecting the waste in a well. In comparison the cited PCT case is more akin to a length of pipe.

Further, in his paragraph 5 he contends that Sisk and Decker contain the "passage" akin to the one which is recited in claim 35. He is incorrect. The passage of claim 35 is recited as having been created by a gap formed by the projections between the claimed "bearing surface" and the underside of the insert.

From claims 33 and 34 from which claim 35 depends, we see that the bearing surface has special and specific features:

- a) the bearing surface is provided by a shoulder formed in the waste body
- b) the bearing surface terminates in a peripheral wall and defines a space for the insert
- c) the bearing surface is recessed
- d) the bearing surface has projections and the projections engage the insert's underside

It is submitted that none of the references relied upon by the examiner show the combination of features a) - d). They are simply not there.

Further, even if the cited references did contain the features which are recited in the claims, there is no motive, suggestion or teaching in the art, even remotely:

- for making the combination
- for suggesting that the combination is desirable or useful
- for suggesting that the combination is obvious

In fact, the lead reference relied upon by the examiner, PCT application WO/80/01701 teaches completely away from projections which form a gap or waste passage. Instead it teaches the use and desirability of seals (16 in Figure 3) precisely to prevent the formation of passages for waste. How then can any combination which includes PCT application WO/80/01701 be considered to render the invention recited by claim 35 obvious?

Another point bears consideration and this point bears on the obviousness rejection as well as the novelty rejections discussed below. Claim 33 specifically recites that the grate or appliance may be positioned... "at any location in the area of the insert...". Similarly claim 46 recites that the installer... "may position said drain or appliance at any selected position within the periphery of said waste receptacle...". Likewise, claim 47 recites that the closure member is of sufficient area "to allow a selection of the position of said appliance outlet or drain anywhere within the periphery of the waste body..."

It is clear that the Decker and Sisk references are irrelevant on the any or anywhere style grate or appliance location referred to above and specifically recited in the rejected claims. They teach only fixed structures with no ability to provide flexibility in installation, which is one of the key motivations for the present invention. The examiner has not even tried to explicitly apply Decker and Sisk to these explicitly recited features. However, PCT application WO/80/01701 is really no more relevant to the question than Decker and Sisk. The cited PCT reference teaches an insert, but only of one kind. The insert (8 in Figure 3) in that reference is shown as having a pre-formed eccentric (see page 5, line 5) opening for the grate or appliance. The PCT reference states that the eccentric opening "permits a certain adjustment" (see page 5, line 4).

If it had been more precise, the PCT reference would have had to say that the eccentric opening provides an opening having a kind of orbit, being a circular orbit and having a fixed unchangeable radius of orbit determined once and for all time by the initial distance of the opening from the center of the insert 8. Accordingly, the examiner has not sufficiently considered the limitations "any" and "anywhere" in the claims, has not considered the content of the prior art accurately and accordingly has failed to consider the differences between the art and the claims as required by law.

Group F:

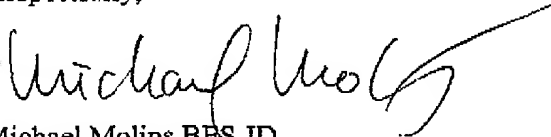
Certain arguments relating to the novelty objections of claims 33, 34 and 46-48 are set out directly above. To repeat, the notion of "any" or "anywhere" type grate/appliance location is simply not present and only the applicant has suggested and taught a device for achieving this result. The PCT reference as well as Sisk and Decker are inadequate under section 102 because each fails to disclose each and every integer of the rejected claims, namely a structure which promotes position of an appliance outlet or drain **anywhere** within the periphery of the waste body. The PCT device may be somewhat flexible in its use but the Applicant has taken this flexibility further to the point where the grate/appliance location is not restrained by features of the insert. This may be a small point in the Examiner's opinion, but it can not be ignored. There is no evidence than anyone before the Applicant of this case taught or even suggested this solution. Any attempt to twist the prior art to support a conclusion to the contrary is the result of impermissible hindsight.

Arguments are also presented above on the **receptacle, well and outlet** features which are explicitly recited in each of claim 33, 34 and 46-48. The receptacle, well and outlet features are simply not shown in the PCT reference.

Conclusions:

The Examiner has not met the burden of examination. The Examiner's conclusions do not adhere to the law of Graham and none of the references cited by the examiner, alone or together teach, suggest or motivate the invention proposed first by the Applicant. It is requested that the application be returned to examination, that the claims may be suitably amended and allowed in accordance with the arguments and amendments proposed above.

Respectfully,



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Claims as Proposed for Amendment with Appeal Brief

33. (Amended) A floor or ground surface waste assembly for receiving floor or appliance generated waste; the assembly including;
a waste collecting receptacle including an open mouth for receiving waste products from a floor surface or appliance ~~ad~~ and a well which terminates in an outlet in fluid communication with said mouth, the outlet connecting the waste assembly to a waste drainage line for eventual discharge of said waste; said collecting receptacle also including a recessed bearing surface extending at least partially about the periphery of said waste body collecting receptacle and which is capable of supporting thereon an insert which forms part of a floor; wherein, the insert receives and retains a grate or appliance outlet; wherein the grate or appliance outlet may be positioned ~~above under floor surface level at a~~ height to accommodate a thickness of a floor cladding and at any location in the area of the insert and within the periphery of the collecting receptacle to allow the assembly to accommodate a predetermined pattern, layout or configuration of floor or ground cladding; wherein the assembly allows the grate or appliance outlet to be positioned in the insert not necessarily in alignment with under floor drainage plumbing.
34. (Original) A waste assembly according to claim 33 wherein said bearing surface is provided by a shoulder formed in the waste body; the bearing surface terminating in a peripheral wall defining a space in which said insert is placed.
35. (Original) A waste assembly according to claim 34 wherein said bearing surface includes projections which engage an underside surface of said insert thereby creating a gap between said shoulder and said insert to allow passage of waste therethrough.
36. (Original) A waste assembly according to claim 35 wherein said peripheral wall terminates in a peripheral flange; wherein an underside surface of the flange engages a floor or support structure.
37. (Original) A waste assembly according to claim 36 wherein said outlet for connecting the collecting receptacle to said drainage waste line extends from a low point of said receptacle.

38. (Original) A waste assembly according to claim 37 wherein said outlet for connecting the receptacle to said drainage line extends from a side wall of said receptacle.

39. (Original) A waste assembly according to claim 38 wherein the grate or appliance outlet may be selectively positioned in said insert to either avoid or intersect with a join or joins in floor cladding.

40. (Amended) A waste assembly according to claim 39 wherein the mouth of said waste receptacle body is square or rectangular.

41. (Original) A waste assembly according to claim 40 wherein said insert closes the mouth of the receptacle.

42. (Original) An assembly according to claim 41 wherein the receptacle is bowl shaped with said outlet downwardly depending from a low point of said bowl.

43. (Original) A waste assembly according to claim 42 wherein said receptacle of said collecting receptacle is bowl shaped with said outlet extending laterally from a wall of said receptacle.

44. (Original) A waste assembly according to claim 43 wherein the mouth of said waste body is closed by a lid which receives said appliance outlet.

45. (Original) A waste assembly according to claim 44 wherein said appliance outlet extends from a toilet pan.

46. (Original) A waste assembly for receiving and discharging waste from a waste producing appliance, surface drain or the like in communication with the assembly ; the assembly including;

a waste receptacle having an open mouth defining a recess for receiving said waste;
an outlet capable of connection to an inlet of drainage plumbing infrastructure allowing discharge of said waste; a closure supported by the waste receptacle for closing said mouth and which receives said surface drain or an outlet of said waste producing appliance;

wherein, the closure is proportioned such that an installer of said surface drain or outlet of said appliance may position said drain or appliance outlet at any selected position within the periphery of said waste receptacle thereby obviating the need for direct connection and or axial alignment between said surface drain or appliance outlet and an inlet of said plumbing infrastructure.

47. (Original) A waste assembly for connecting an appliance outlet or floor drain to plumbing infrastructure of a building, the waste assembly comprising; a waste body having a wide mouth and defining a reservoir which includes an outlet which connects said waste body to an inlet to drainage plumbing infrastructure, a closure member closing said mouth and which receives via an opening within said appliance outlet or floor drain; wherein said closure member is of sufficient area to allow a selection of the position of said appliance outlet or drain anywhere within the periphery of the waste body such that the position in the closure of the appliance outlet or floor grate is not dictated by direct axial alignment of said appliance outlet or floor drain with said inlet to drainage plumbing infrastructure.

48. (Original) A waste receptacle for use with a waste assembly for collection and discharge of waste from a waste generating appliance or floor waste, the waste body including an open mouth receptacle for receiving said waste and an outlet for discharging said waste received in said receptacle, the waste receptacle further including a bearing surface which receives an insert proportioned to cover said mouth, the insert adapted to receive a grate or outlet of a waste generating appliance positioned in the insert such that the outlet of the waste receptacle connects to and aligns with an inlet to under floor drainage plumbing whereas said grate or appliance outlet need not align with said inlet to said under floor plumbing thereby allowing flexibility in the positioning of said floor grate or appliance.